UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,511	01/27/2004	Edward Snow Willis II	555255012694	2513

43563   7590   04/29/2009
MOFFAT & CO
427 LAURIER AVEUE W., SUITE 1200
OTTAWA, ON K1R 7Y2
CANADA

EXAMINER
BROPHY, MATTHEW J

ART UNIT	PAPER NUMBER
2191	

MAIL DATE	DELIVERY MODE
04/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 February 2009*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10,12 and 13* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10, 12 and 13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This office action is in response to amendment filed February 10, 2009

2.   Claims 1-10, 12 and 13 are now pending.

Interview

3.   Regarding Applicant's Remarks R12 & R13, to clarify, no interview on the merits has been held on this case since the previous office action. Applicant's representatives contacted the examiner on January 29, 2009. Examiner asked applicant to submit an interview request form in order to discuss the Application and Office Action, so that the examiner could be properly prepared pursuant to MPEP §713.01 ("When applicant is initiating a request for an interview, an "Applicant Initiated Interview Request" form (PTOL-413A) should be submitted to the examiner Prior to the interview in order to permit the examiner to prepare in advance for the interview and to focus on the issues to be discussed.") No agenda was received after that date and no interview was held.

4.   Applicant is invited to contact the examiner and submit an Interview Request to schedule an interview *if Applicant feels it would be beneficial.

Response to Amendment

Double Patenting

5.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

6.   Claim 1-10, 12 and 13 rejected on the ground of nonstatutory double patenting

over claim of U. S. Patent No. 7,222,340 since the claims in view of Birum et al

(2003/0221189), in view of O'Neill et al (2004/0068721). If allowed, would improperly

extend the "right to exclude" already granted in the patent.

The nonstatutory double patenting rejection is based on a judicially created

doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (c) or 1.321

(d) may be used to overcome an actual or provisional rejection based on a nonstatutory

double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of

activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a

terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with

37 CFR 3.73(b).

Regarding a non-statutory obvious type double patenting rejection. MPEP §804

states:

> A nonstatutory obviousness-type double patenting rejection is appropriate
> where the conflicting claims are not identical, but at least one examined
> application claim is not patentably distinct from the reference claim(s)
> because the examined application claim is either anticipated by, or would
> have been obvious over, the reference claim(s). See, e.g., In re Berg, 140
> F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d
> 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); and In re Longi, 759 F.2d 887,
> 225 USPQ 645 (Fed. Cir. 1985)....
> A double patenting rejection of the obviousness-type>, if not based on an
> anticipation rationale,< is "analogous to [a failure to meet] the
> nonobviousness requirement of 35 U.S.C. 103" except that the patent
> principally underlying the double patenting rejection is not considered
> prior art. In re Braithwaite, 379 F.2d 594, 154 USPQ 29 (CCPA 1967).
> Therefore, *>the< analysis employed in an obviousness-type double
> patenting rejection parallels the guidelines for analysis of a 35 U.S.C. 103
> obviousness determination. In re Braat, 937 F.2d 589, 19 USPQ2d 1289
> (Fed. Cir. 1991); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
> 1985).

Here, with the exception of the bolded elements, the claims limitations of the

present application are obvious in view of the aligned limitations from 7,222,340

described below.

1. A method of dynamically managing non-volatile memory items on a wireless device through a network, said method comprising the steps of:	A method of dynamically managing non-volatile memory items in a wireless device from non-volatile memory item values stored in a software load on said wireless device, said method comprising the steps of:
when connecting to said network, checking for a unique identifier item stored in said non-volatile memory items;	checking the non-volatile memory items for a unique identifier item;
if said unique identifier item exists,	if said unique identifier item exists,

checking whether a value stored in said unique identifier item is the same as a software identifier located in software on said wireless device;	comparing an identifier stored within said unique identifier item with a software identifier located in software on said wireless device;
if said unique identifier item does not exist or said value is different from said software identifier,	and if said unique identifier item does not exist or if said identifier is different from said software identifier,
sending said software identifier along with an identifier indicating a carrier company <u>associated with the wireless mobile station</u> to said network; receiving from said network a set of changes related to said software identifier;	
executing said set of changes to update said non-volatile memory items; and	performing the steps of: updating said non-volatile memory items from said non-volatile memory item values stored in the software load on said wireless device;
writing said software identifier to said unique identifier item;	
otherwise end.	
	and writing said software identifier to said unique identifier item;
	else performing no update on said non-volatile memory items.
2. (previously presented) The method of claim 1, wherein said unique identifier item value and said software identifier are operating system version numbers of software on said wireless device.	2. The method of claim 1, wherein said unique identifier and said software identifier are operating system version numbers of software on said wireless device.
3. (original) The method of claim 1, wherein	3. The method of claim 1, wherein said writing step is performed after said

said writing step is performed after said updating is complete.	updating step is complete.
4. (previously presented) The method of claim 1, wherein said updating allows rollback to a previous soft-ware version.	4. The method of claim 1, wherein said updating step allows rollback to a previous software version.
5. (previously presented) The method of claim 4, wherein the updating step creates a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback to said existing non-volatile memory item.	5. The method of claim 4, wherein said updating step preferably creates a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback to said existing non-volatile memory item.
6. (original) The method of claim 5, wherein said updating step does not delete non-volatile memory items that have previously been created.	6. The method of claim 5, wherein said updating step does not delete non-volatile memory items that have previously been created.
7. (previously presented) The method of claim 6, wherein non-volatile memory items managed under other non-volatile memory management schemes are not updated in said updating step.	7. The method of claim 6, wherein non-volatile memory items managed under other non-volatile memory items management schemes are not updated in said updating step.
8. (Original) The method of claim 5, wherein software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items.	8. The method of claim 5, wherein software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items.
9. (original) The method of claim 8, wherein said mapping is modified using	8. The method of claim 5, wherein software on said wireless device includes

said set of changes.	a mapping from old non-volatile memory items to new non-volatile memory items.
10. (currently amended) A method for dynamically managing non-volatile memory items on a wireless device during registration to a network, said method allowing rollback to previous versions of software using said non-volatile memory items, said method comprising the steps of:	9. A method for dynamically managing non-volatile memory items on a wireless device from non-volatile memory item values stored in a software load on said wireless device, said method allowing rollback to previous versions of software using said non-volatile memory items, said method comprising the steps of:
on registration, checking the non-volatile memory items for a unique identifier item;	checking the non-volatile memory items for a unique identifier item;
if said unique identifier item exists, checking whether a value in said unique identifier item is the same as a software identifier;	if said unique identifier item exists, comparing an identifier stored within said unique identifier item with a software identifier located in software on said wireless device;
if said unique identifier item does not exist or if said identifier is different from said software identifier, performing the steps of:	and if said unique identifier item does not exist or if said identifier is different from said software identifier, performing the steps of:
sending said software identifier along with an identifier indicating a carrier telecommunications company associated with the wireless mobile station to said network;	
receiving a set of changes from said network to update said non-volatile memory items, said updating step:	updating said non-volatile memory items from said non-volatile memory item values stored in the software load on said wireless device, said updating step:
creating a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback;	
retaining non-volatile memory items that have previously been created;	creating a new non-volatile memory item

	rather than replacing an existing non-volatile memory item to facilitate rollback;
avoiding non-volatile memory items created under other non-volatile memory management schemes;	retaining non-volatile memory items that have previously been created;
and writing said software identifier to said unique identifier item,	and avoiding non-volatile memory items created by default or refurbished non-volatile memory files;
	and writing said software identifier to said unique identifier item;
whereby said creating, retaining and avoiding steps in said updating step allow rollback to previous versions of software on said wireless device;	...
	whereby said creating, retaining, and avoiding steps in said updating step allow rollback to previous versions of software on said wireless device.
otherwise ending.	
	[else performing no update on said non-volatile memory items]
(currently amended) A wireless mobile station comprising:	10. A wireless communications device comprising:
a receiver for receiving signals from a network;	a receiver for receiving signals;
a transmitter for transmitting signals to a network;	a transmitter for transmitting signals;
a digital signal processor for processing signals to be sent on said transmitter and received on said receiver;	a digital signal processor for processing signals to be sent on said transmitter and received on said receiver;
a microprocessor communicating with said digital signal processor;	a microprocessor communicating with said digital signal processor;
non-volatile memory having program	non-volatile memory having program

storage and non-volatile memory items, said non\- volatile memory communicating with said microprocessor; and input and output subsystems interacting with said microprocessor, said microprocessor including:	storage and non-volatile memory items, said non-volatile memory communicating with said microprocessor; and input and output subsystems interacting with said microprocessor, wherein said microprocessor includes
means for checking said non-volatile memory items for a unique identifier item; means for checking whether a value stored in said unique identifier item is the same as a software identifier;	means for checking said non-volatile memory items for a unique identifier item, comparing an identifier stored within said unique identifier item with a software identifier located in software in said program storage if said unique identifier item exists;
means for updating said non-volatile memory;	[means for performing the steps of: updating said non-volatile memory items…]
wherein if said means for checking said non-volatile memory for a unique identifier item finds that said unique identifier item does not exist or said means for checking whether said value finds said value is different from said software identifier, **said wireless mobile station sends said software identifier indicating <u>a carrier telecommunications company associated with the wireless mobile station</u> to said network and receives a set of changes from said network,** said means for updating said non-volatile memory executing said set of changes and	and if said unique identifier item does not exist or if said identifier is different from said software identifier, means for performing the steps of: …updating said non-volatile memory items from said non-volatile memory item values stored in the software on said wireless device;

writing said software identifier to said unique identifier item.	and writing said software identifier to said unique identifier item; else performing no update on said non-volatile memory items.
13. (previously presented) The wireless mobile station of claim 12, wherein said unique identifier item value and said software identifier are operating system version numbers of software in said program storage.	11. The wireless device of claim 10, wherein said unique identifier and said software identifier are operating system version numbers of software in said program storage.

Regarding the limitation "sending said software identifier along with an identifier indicating a carrier company associated with the wireless mobile station to said network; receiving from said network a set of changes related to said software identifier" present in independent claims 1, 10 and 12, while the claims of 7,222,340 do not explicitly teach these limitations they are obvious in view of Birum and O'Neil. Here, Birum Teaches:

-sending said software identifier along with an identifier [0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers)] ... to said network [Figure 1, "140"];

It would have been obvious to one of ordinary skill in the are to combine the claimed invention of 7,22,340 with the invention of Birum as Birum would allowed the claimed inventions to "...downloads the resources from the server [and] stores the

resource locally…" (Birum Paragraph [0009]) which allows for distributed updating of

software on a wireless system.

Birum does not explicitly teach: [sending]...[software identifier] identifying a carrier

telecommunications company associated with the wireless mobile station [to said

network]

However, this limitation is taught by O'Neil. **(Paragraph [0037] "It is contemplated**

that a download agent of a wireless communication device may periodically

communicate to a distribution environment in order to determine availability of

software updates….The wireless communication device may communicate the

type (i.e., make and model) of software it uses." *the make and model inherently*

indicate the carrier (see note below) which is associated with the generation

environment (i.e. wireless mobile station) as seen in **Paragraph [0047] "It is**

contemplated that the generation environment 411 is owned and operated by an

entity such as a carrier, wireless device manufacturer, software manufacturer, or

value added reseller to provide support and service for all existing users of its

wireless communication devices.") *(Note: This inherency is supported by Paragraph*

8 of the background, showing that the make and model indicators are used within the

context of a specific carrier)

In addition it would have been obvious to one of ordinary skill in the art at the time of the

invention to combine the teachings of Birum with the teachings of O'Neill as the

determination of carrier information taught by O'Neill allows for the "appropriate update

package [to] be prescribed [by the carrier]." (O'Neill Paragraph [0008])

Claim Rejections - 35 USC § 112

7.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

8.   Claims 1-10, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. Claim 1, 10 and 12 recites the limitation "the

mobile wireless set" in the amended limitation. There is insufficient antecedent basis for

this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

15.   Claims 1, 3-10 and 12 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Birum et al (2003/0221189), in view of O'Neill et al (2004/0068721).

Claim 1:

A method of dynamically managing non-volatile memory items in a wireless device

through a network, said method comprising the steps of:

-when connecting to said network [Figure 1], checking for a unique identifier item stored

in said non-volatile memory items [0022, "where resources that belong to a particular

version of an application are identified and placed in a list (hereinafter this version is

called "VI")"];

-if said unique identifier exists, checking whether a value stored in said unique identifier

item is the same as a software identifier [0006, "current version of an application is

created and compared to the list of resources in a new version"; 0029, where the

process compares the resource in V2 with the resource in V1 ."] located in software

[0009, "for the new version stored locally on the client" (Since software identifier stored

in software, therefore it is \ inherent that the new version must be stored locally.)] on

said wireless device [Figure 1, "140"; 0051, "wireless links" (Wireless is creating a

wireless link therefore, it is inherent you have a wireless device.)];

-if said unique identifier item does not exist [0039, "When a resource exists in V2 that

does not exist in VI"] or if said identifier is different from said software identifier [0030, "If

the resources are different"],

sending said software identifier along with an identifier [0046, "a client can change a file,

such as a configuration file, and cause that file to be sent back to a server."

(Configuration file that consists of identifiers)] … to said network [Figure 1, "140"];

-receiving from said network [Figure 1; 0051, "receives transmitted messages"] a set of changes related to said software [0011, "resources needed for the new version that are not in the current version"];

-executing said set of changes

[Figure 7, "715"] to update said non-volatile memory items [0043, "downloaded all or a subset of the resources required to change a version"]; and

-writing said software identifier to said unique identifier item

[0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)]

-otherwise end.

See FIG. 4, #410, No step if there is no unique identifier identified with a version change.

Birum does not explicitly teach: [sending]...an identifier indicating a carrier telecommunications company associated with the wireless mobile station [to said network]

However, this limitation is taught by O'Neil. **(Paragraph [0037] "It is contemplated that a download agent of a wireless communication device may periodically communicate to a distribution environment in order to determine availability of software updates….The wireless communication device <u>may communicate the type (i.e., make and model) of software it uses</u>."** *the make and model inherently indicate the carrier (see note below) which is associated with the generation environment (i.e. wireless mobile station) as seen in* **Paragraph [0047] "It is contemplated that the generation environment 411 is owned and operated by an entity such as a carrier, wireless device manufacturer, software manufacturer, or value added reseller to provide support and service for all existing users of its wireless communication devices.")** *(Note: This inherency is supported by Paragraph 8 of the background, showing that the make and model indicators are used within the context of a specific carrier)*

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of O'Neill as the determination of carrier information taught by O'Neill allows for the "appropriate update package [to] be prescribed [by the carrier]." (O'Neill Paragraph [0008])

Claim 3:

-said writing step is performed after said updating step is complete

[0009, "client downloads the resources.., modifies a data structure..."; 0045, "while modifying the configuration file to be compatible with the new version."].

Claim 4:

-said updating step allows rollback to a previous software version

[0006, "the version of an application may be updated or rolled back"].

Claim 5:

-said updating step creates a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback to said existing non-volatile memory item.

[0045, "should not be overwritten...the upgrade list may specify that it should not be replaced."].

Claim 6:

-said updating step does not delete non-volatile memory items that have previously been created [0041, "the client may or may not actually delete"; 0045, "upgrade list may specify that it should not be replaced."].

Claim 7:

-non-volatile memory items managed under other non-volatile memory management schemes are not updated in said updating step

[0038, "If the client has the most recent version, it may begin executing an application associated with the content." (If the versions are the same then there is no need to update.)].

Claim 8:

-software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items

[0045, "process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying configuration file to make it compatible requires mapping of the two versions.)].

Claim 9:

-said mapping is modified using said set of changes

[0045, "process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (In order to modify old configuration file you need to have a set of changes to make it compatible with new version.)].

Claim 10:

A method for dynamically managing non-volatile memory items on a wireless device during registration to a network, said method allowing rollback to previous versions of software using said non-volatile memory items, said method comprising the steps of:

-on registration [0051, are "intermediary devices on a communications network..,
remotely connected"], checking the non-volatile memory items for a unique identifier
[0022, "where resources that belong to a particular version of an application are
identified and placed in a list (hereinafter this version is called "VI")"];

-if said unique identifier item exists, checking whether a value in said unique identifier
item is the same as a software identifier; [0006, "current version of an application is
created and compared to the list of resources in a new version"; 0029, "where the
process compares the resource in V2 with the resource in V1 ."]

-if said unique identifier item does not exist [0039, "when a resource exists in V2 that
does not exist in VI..."] or if said identifier is different from said software identifier [0030,
"If the resources are different..."], performing steps of:

-sending said software identifier along with an identifier [0046, "a client can change a
file, such as a configuration file, and cause that file to be sent back to a server."
(Configuration file that consists of identifiers)]...to said network [Figure 1, "140"];

-receiving a set of changes from said network [Figure 1; 0051, "receives transmitted
messages"] to update said non-volatile memory items, said updating step: [0011,

"resources needed for the new version that are not in the current version"]

-creating a new non-volatile memory item rather than replacing an existing non-volatile

memory item to facilitate rollback;

[0045, "should not be overwritten...the upgrade list may specify that it should not be

replaced."]

-retaining non-volatile memory items that have previously been created;

[0041, "the client may or may not actually delete"; 0045, "upgrade list may specify that it

should not be replaced."]

-avoiding non-volatile memory items created under traditional management;

[0045, "When so designated, if such resources do not exist on a client computer, they

may be updated with a "default"..." ("Traditional provisioning mechanisms" are

considered well-known methods because "traditional" indicates old and well known.)]

-writing said software identifier to said unique identifier item [0045, "the process may

maintain data contained in the old configuration file while modifying the configuration file

to be compatible with the new version." (Modifying old configuration file to be compatible

with new version allows easy tracking both old and new version)], whereby said

creating, retaining, and avoiding steps in said updating step allows rollback to previous

versions of software on said wireless device [0006, "the version of an application may

be updated or rolled back"]

-otherwise ending.

See FIG. 4, #410, No step if there is no unique identifier identified with a version

change.

Birum does not explicitly teach: [sending]...an identifier indicating a carrier

telecommunications company associated with the wireless mobile station [to said

network]

However, this limitation is taught by O'Neil. **(Paragraph [0037] "It is contemplated**

that a download agent of a wireless communication device may periodically

communicate to a distribution environment in order to determine availability of

software updates….The wireless communication device may communicate the

type (i.e., make and model) of software it uses." *the make and model inherently*

indicate the carrier (see note below) which is associated with the generation

environment (i.e. wireless mobile station) as seen in **Paragraph [0047] "It is**

contemplated that the generation environment 411 is owned and operated by an

entity such as a carrier, wireless device manufacturer, software manufacturer, or

value added reseller to provide support and service for all existing users of its

wireless communication devices.") *(Note: This inherency is supported by Paragraph*

8 of the background, showing that the make and model indicators are used within the

context of a specific carrier)

In addition it would have been obvious to one of ordinary skill in the art at the time of the

invention to combine the teachings of Birum with the teachings of O'Neill as the

determination of carrier information taught by O'Neill allows for the "appropriate update

package [to] be prescribed [by the carrier]." (O'Neill Paragraph [0008])

Claim 12:

A wireless communication device comprising:

-a receiver for receiving signals from a network; [0051, "receives transmitted

messages"]

-a transmitter for transmitting signals to a network; [0051, "receives transmitted

messages and forwards them to their correct destinations over available routes."]

-a digital signal processor for processing signals to be sent on said transmitter and

received on said receiver; [Figure 3, "302"]

-a microprocessor communicating with said digital signal processor; [Figure 3, "306"]

-non-volatile memory having program storage and non-volatile memory items

[0061, "Computer storage media may include volatile and nonvolatile, removable..."],

said non-volatile memory communicating with said microprocessor [0051, "many

computers through a mesh of possible connections..."; 0061, "store the desired

information and which can be accessed by a computing device."]; and input and output

subsystems interacting with said microprocessor,

wherein said microprocessor including: [Figure 3, "320"]

-means for checking said non-volatile memory items for a unique identifier item,

See FIG. 4 & related text at [0022]. Resources are listed for a current version at 405

(**software identifiers for resource items in V1**). At step 430 (& FIG. 6) resource list,

with **unique identifier item, for V2** is identified.

-means for checking whether a value stored in said unique identifier item is the same as

a software identifier

[0006, "current version of an application is created and compared to the list of resources

in a new version"; 0029, "where the process compares the resource in V2 **(unique

identifier items)** with the resource in VI **(software identifiers)**."];

-means for updating said non-volatile memory; [0045, "downloaded all or a subset of the

resources required to change a version"]

-wherein if said means for checking said non-volatile memory for a unique identifier item finds that said unique identifier item does not exist [0039, "When a resource exists in V2 that does not exist in VI"] or said means for checking whether said value finds said value is different from said software identifier [0030, "If the resources are different"],

-said wireless device sends said software identifier to said network and receives a set of changes, [0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers); 0051, "receives transmitted messages"] from said network [Figure 1]

-said means for updating said non-volatile memory executing said set of changes [0043, downloaded all or a subset of the resources required to change a version]

-and writing said software identifier to said unique identifier item.
[0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)]

Birum does not explicitly teach: [sending]...[software identifier] identifying a carrier telecommunications company associated with the wireless mobile station [to said network]

However, this limitation is taught by O'Neil. **(Paragraph [0037] "It is contemplated that a download agent of a wireless communication device may periodically communicate to a distribution environment in order to determine availability of software updates….The wireless communication device <u>may communicate the type (i.e., make and model) of software it uses</u>."** *the make and model inherently indicate the carrier (see note below) which is associated with the generation environment (i.e. wireless mobile station) as seen in* **Paragraph [0047] "It is contemplated that the generation environment 411 is owned and operated by an entity such as a carrier, wireless device manufacturer, software manufacturer, or value added reseller to provide support and service for all existing users of its wireless communication devices.")** *(Note: This inherency is supported by Paragraph 8 of the background, showing that the make and model indicators are used within the context of a specific carrier)*

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of O'Neill as the determination of carrier information taught by O'Neill allows for the "appropriate update package [to] be prescribed [by the carrier]." (O'Neill Paragraph [0008])

15.   Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birum et al (2003/0221189), in view of O'Neil et al (2004/0068721) and further in view

of in view of Moore et al (2002/0078142).

Claim 2 and 13:

 Birum discloses the method as in claims 1 and 10b above, but does not disclose the

unique identifier item value and software identifier as being operating system version

numbers. Moore does disclose a similar method as in claim 1 and 10b, and in addition

the identifiers are version numbers [Figure 6A]. Birum and Moore are in the same field

of endeavor so it would have been obvious to a person of ordinary skill in the art at the

time the invention was made to create unique version number and compare version

numbers in order to insure comparing not only the same software but also the same

version of the software.

Birum teaches the limitations of claims 1 and 12, and Moore further teaches the

limitations of Claims 2 and 13. In addition, it would be obvious to one of ordinary skill in

the art to apply the system versions numbers in Moore to the Birum invention as the two

references are in the same field of endeavor, and the use of version numbers provides

a tool of comparing operating system products. (Moore Paragraph [0008] "The

information may be organized into records that identify things such as whether an online

driver exists for the device, and if so, **what its version number is**, **so that other**

detected versions of that driver (e.g., on a local hard drive) can be compared

against the online version to determine which is the most-recent version and/or the

"best match.") further, the well-known comparison of version numbers suggested in

Moore would be obvious to try, with both a predictable result (a successful comparison

mechanism) and a reasonable expectation of success.

Response to Arguments

9.   Applicant's arguments with respect to claims 1-10, 12 and 13 have been

considered but are moot in view of the new ground(s) of rejection.

Conclusion

10.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

        A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to MATTHEW J. BROPHY whose telephone number is

571-270-1642. The examiner can normally be reached on Monday-Thursday 8:00AM-

5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Wei Zhen can be reached on (571) 272-3708. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJB
4/23/2009

/Wei Y Zhen/
Supervisory Patent Examiner, Art Unit 2191